

Message Text

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12/63

ACTION EB-04

INFO OCT-01 EUR-03 ISO-00 SS-04 NSC-04 NSCE-00 INR-01

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R 251936Z JUN 75

FM USMISSION OECD PARIS

TO SECSTATE WASHDC 7708

INFO AMEMBASSY LONDON

C O N F I D E N T I A L SECTION 01 OF 03 OECD PARIS 16560

LIMDIS GREENBACK

C O R R E C T E D C O P Y (PARA ONE)

PASS TREASURY FOR SECRETARY SIMON; (FROM HICKMAN)

D FOR DUPUTY SECRETARY INGERSOLL

E.O. 11652: XGDS-1 12/31/75

TAGS: EFIN, UK

SUBJECT: US/UK DOUBLE TAXATION TREATY

REF: LONDON 09730

AS A RESULT OF OUR MEETING WITH THE BRITISH DELEGATION
THIS AFTERNOON, I SUGGEST THE FOLLOWING RESPONSE TO
CHANCELLOR HEALY'S LETTER OF MONDAY. I WILL TRY TO
TALK WITH YOU BY PHONE LATER TODAY.

PROPOSED LETTER TO HEALY

I APPRECIATE YOUR CONCERN ABOUT THE STATUS OF
THE DOUBLE TAXATION CONVENTION AND TO THE EXTENT
CONSISTENT WITH A PROPER DISPOSITION OF THE ISSUE,
I WISH TO PLEDGE MY FULLEST COOPERATION IN AVERTING
ANY POSSIBLE POLITICAL OR ECONOMIC DISTURBANCES.
I SHOULD LIKE TO TALK WITH YOU BY TELEPHONE IN THE
NEXT FEW DAYS, BUT MEANWHILE IT MAY BE HELPFUL IF
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I OUTLINE MY CONCERNS.

FROM OUR POINT OF VIEW, THERE IS A FUNDAMENTAL PROBLEM WHICH MUST SOMEHOW BE SOLVED--NAMELY, THAT IMPUTATION TAX SYSTEMS WHICH FAIL TO PROVIDE CREDITS FOR U.S. INVESTORS COMPARABLE TO THOSE PROVIDED DOMESTIC INVESTORS ARE MAJOR OBSTACLES TO FREE FLOWS OF CAPITAL AND CREATE THE KIND OF DISCRIMINATION WHICH IT IS THE BASIC PURPOSE OF OUR TREATY SYSTEM TO PREVENT. AS PRESENTLY ADMINISTERED, THE U.K. SYSTEM WILL TEND TO CAUSE AMERICAN INVESTMENT IN BRITAIN TO BE LIQUIDATED BECAUSE ENTERPRISES WILL BE WORTH MORE IN THE HANDS OF BRITISH OWNERS THAN IN THE HANDS OF AMERICAN OWNERS AND THE LATTER WILL SEEK TO REALIZE THAT VALUE BY SALE. THE ECONOMICS OF THE SITUATION ARE INEXORABLE AND MUST EVENTUALLY BECOME A SERIOUS CONCERN TO YOUR GOVERNMENT. AT THE SAME TIME, BRITISH INVESTMENT IN THE UNITED STATES WILL BE CURTAILED, BECAUSE BRITISH INVESTORS WILL FIND HIGHER RETURNS AT HOME. THAT IS A MATTER OF CONCERN TO US AND OUR OFFER WOULD DEAL WITH IT BY ELIMINATING ENTIRELY OUR WITHHOLDING TAXES ON INTEREST AND DIVIDENDS REMITTED TO BRITISH INVESTORS--WHICH IS A MAJOR CONCESSION NOT MADE IN OUR TREATY WITH FRANCE. WITH THE INCREASING ADOPTION OF IMPUTATION SYSTEMS IN THE EUROPEAN COMMUNITY AND ELSEWHERE, IT HAS BECOME IMPERATIVE THAT WE REACH A SATISFACTORY RESOLUTION OF THIS ISSUE.

WE, TOO, WOULD PREFER NOT TO HAVE TO GIVE NOTICE AT THIS TIME, BUT THE TERMS OF THE CONVENTION CREATE A MAJOR DEGREE OF INFLEXIBILITY. THE TREATY CAN BE TERMINATED ONLY AT THE END OF A CALENDAR YEAR AND ONLY ON SIX MONTHS NOTICE--WHICH MEANS THAT UNLESS SOME FORMAL NOTICE IS GIVEN BEFORE JULY 1, THE ENTIRE MATTER COULD REMAIN IN SUSPENSE UNTIL 1977. FURTHER, IN THE ABSENCE OF AN IMMINENT DATE FOR TREATY RESOLUTION, WE WILL BE REQUIRED, UNDER EXISTING LEGAL PRECEDENTS, TO HOLD ADMINISTRATIVELY THAT THE BRITISH ADVANCE CORPORATION TAX IS NOT ELIGIBLE FOR CREDIT AGAINST THE U.S. TAX LIABILITY OF PORTFOLIO INVESTORS--WHICH

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IS LIKELY TO BE A SIGNIFICANT DETRIMENT TO U.S. INVESTMENT IN BRITAIN. GIVING NOTICE WOULD PERMIT US TO DELAY THIS HOLDING UNTIL AGREEMENT IS REACHED.

AGAINST THIS BACKGROUND, SEVERAL POINTS SHOULD BE NOTED:

1. THE PROPOSED FORM OF NOTICE, WHICH IS ENCLOSED, MAKES IT CLEAR THAT THE GIVING OF NOTICE

IS SEEN AT THIS TIME AS A TECHNICAL FORMALITY NECESSARY
TO AVOID PREJUDICING OUR POSITION, AND THAT IT WILL BE
WITHDRAWN ASSUMING THAT AGREEMENT IS REACHED LATER
THIS YEAR.

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C O N F I D E N T I A L SECTION 02 OF 03 OECD PARIS 16560

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2. IT IS NOT CORRECT TO SAY THAT OUR PENDING
PROPOSAL TO THE U.K. OFFERS TERMS LESS FAVORABLE
THAN THOSE IN THE FRENCH CONVENTION. WE PROPOSE
A MAJOR CONCESSION TO THE U.K. NOT MADE TO FRANCE,
NAMELY, THE ELIMINATION OF ALL WITHHOLDING ON PAYMENTS
TO U.K. RESIDENTS. WE DO NOT CONSIDER THE 1967 UNITED
STATES TAX TREATY WITH FRANCE AS A USEFUL PRECEDENT.
THAT AGREEMENT WAS ENTERED INTO WHEN THE IMPUTATION
SYSTEM WAS UNIQUE TO FRANCE AND DID NOT REFLECT A
SETTLED POLICY WITH REGARD TO IMPUTATION SYSTEMS
WHICH HAVE SINCE BECOME MORE WIDESPREAD.

3. AT THE MEETING OF THE OECD FISCAL COMMITTEE
IN PARIS ON WEDNESDAY OF THIS WEEK, OUR DELEGATION
SERVED FORMAL NOTICE ON MEMBER COUNTRIES, INCLUDING
FRANCE, THAT WE REGARD IMPUTATION SYSTEMS WHICH FAIL
TO PROVIDE COMPARABLE CREDITS FOR U.S. INVESTORS AS
INCOMPATIBLE WITH OUR BASIC PREMISES, AND THAT WE

INTEND TO REOPEN TREATIES WITH COUNTRIES HAVING SUCH SYSTEMS "AS RAPIDLY AS FEASIBLE."

4. THIS ISSUE HAS BEEN UNDER DISCUSSION BETWEEN OUR TWO GOVERNMENTS FOR THREE YEARS. OUR FUNDAMENTAL PROBLEMS HAVE BEEN CLEARLY OUTLINED FROM THE OUTSET
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AND WE HAVE MADE SEVERAL PROPOSALS WHICH WE BELIEVED WERE REASONABLE COMPROMISES. ALL HAVE BEEN REJECTED, ON GROUNDS WHICH HAVE SEEMED TO US MORE THEORETICAL THAN PRACTICAL, AND NO COUNTERPROPOSALS HAVE BEEN MADE. IT IS DIFFICULT FOR US TO CONCLUDE, IN SUCH CIRCUMSTANCES, THAT FURTHER DELAY WILL BE FRUITFUL.

5. OUR OUTSTANDING PROPOSAL IS, WE BELIEVE, GENEROUS. IT IS A COMPROMISE AND AS SUCH WOULD GIVE US LESS THAN WE BELIEVE PROPER. NO ADDITIONAL REVENUES ARE EXPECTED FOR THE U.S. TREASURY, AND INDEED A SLIGHT LOSS IS ANTICIPATED. ALL CONCESSIONS ASKED OF THE U.K. WOULD REDOUND TO THE BENEFIT OF INVESTORS AND WOULD, THEREFORE, FURTHER YOUR OBJECTIVE OF PROVIDING CAPITAL INCENTIVES.

6. WE FULLY UNDERSTAND THAT OTHER, LARGER ISSUES HAVE PRE-EMPTED MINISTERIAL CONSIDERATION OF THIS PROBLEM IN RECENT WEEKS. WE HAVE NOT SUPPOSED A FINAL RESOLUTION OF THIS PROBLEM TO BE LIKELY BY JUNE 30 AND, AS INDICATED, THE NOTICE IS INTENDED TO SERVE A TECHNICAL, PROTECTIVE PURPOSE. HOWEVER, IF AGREEMENT IS INDEED POSSIBLE, IT SHOULD BE POSSIBLE TO ACHIEVE OR FORESEE IT BY AUTUMN, IN WHICH CASE THE FORMAL NOTICE WILL BE WITHDRAWN WITH NO ADVERSE CONSEQUENCES OTHER THAN A DEGREE OF TEMPORARY BUSINESS UNCERTAINTY IN THE INTERVAL. IN ANY EVENT, FAIRNESS TO BUSINESS INVESTORS REQUIRES THAT THEY BE APPRISED THAT THERE ARE RISKS, EITHER NOW OR LATER, SO THAT THEY MAY PLAN THEIR TRANSACTIONS ACCORDINGLY. WE ARE ADVISED BY YOUR OFFICIALS THAT THE POSSIBILITY OF TERMINATION IS ALREADY KNOWN IN BRITISH BUSINESS CIRCLES, ALTHOUGH WE HAVE AS YET HAD NOT SIMILAR INDICATIONS FROM AMERICAN BUSINESSES. EVEN IF WE SHOULD FOREGO NOTICE THIS YEAR, THE POSSIBILITY THAT IT WILL COME NEXT YEAR WILL CREATE EVEN GREATER UNCERTAINTIES FOR LONG-TERM INVESTORS. IF WE ARE TO AVOID AN INDEFINITE CHILLING OF INVESTMENT ACTIVITY, THE ISSUE MUST BE RESOLVED IN THE NEXT FEW MONTHS; AND IT SEEMS FAR PREFERABLE TO BE
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FORTHRIGHT IN EXPLAINING THE SITUATION AND DILIGENT
IN RESOLVING IT, RATHER THAN LEAVING IT FOR RUMOR,
SPECULATION AND LEISURELY RESOLUTION.

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C O N F I D E N T I A L SECTION 03 OF 03 OECD PARIS 16560

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DRAFT-PROPOSED NOTICE

I HAVE THE HONOR TO REFER TO THE CONVENTION
BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED
KINGDOM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME, SIGNED AT WASHINGTON ON THE 16TH OF APRIL 1945,
AS MODIFIED BY THE SUPPLEMENTARY PROTOCOL SIGNED AT
WASHINGTON ON THE 25TH OF MAY, 1954,
THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON
THE 19TH OF AUGUST, 1957, AND THE SUPPLEMENTARY
PROTOCOL SIGNED AT WASHINGTON ON THE 17TH OF MARCH,
1966, AND TO RECENT DISCUSSIONS BETWEEN REPRESENTATIVES
OF OUR TWO GOVERNMENTS CONCERNING POSSIBLE MODIFICATIONS

IN THE CONVENTION IN VIEW OF THE RECENT REVISION OF
THE INCOME TAX LAWS OF THE UNITED KINGDOM.

OFFICIALS OF THE TWO GOVERNMENTS HAVE BEEN
DISCUSSING THE CONSEQUENCES OF COMBINING RECENT CHANGES
IN THE UNITED KINGDOM LAW WITH THE PROVISIONS OF THE
EXISTING INCOME TAX CONVENTION AND, IN PARTICULAR, THE
POSITION OF THE UNITED STATES THAT SOME CHANGES IN THE
CONVENTION ARE NEEDED TO AVOID PLACING U.S. INVESTORS
IN THE UNITED KINGDOM AT A DISADVANTAGE. THE UNITED
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STATES GOVERNMENT TRUSTS THAT A SATISFACTORY RESOLUTION
OF THAT QUESTION WILL BE REACHED IN THE NEXT FEW MONTHS.
NORMALLY, THE EXPECTATION THAT AGREEMENT WILL BE FORTH-
COMING WOULD MAKE IT UNNECESSARY TO TAKE ANY FORMAL
ACTIONS UNDER THE CONVENTION. HOWEVER, THE TERMS OF
THE CONVENTION ARE LESS FLEXIBLE THAN MIGHT BE DESIRED
IN PRESCRIBING PROCEDURES, AND AS A RESULT NECESSITATE
THE TAKING OF PRECAUTIONARY FORMALITIES EVEN WHILE
DISCUSSIONS ARE PROCEEDING IN REGULAR FASHION. IN
PARTICULAR, THE CONVENTION PERMITS TERMINATION ONLY AT
THE END OF A CALENDAR YEAR AND, UNDER ARTICLE
XXIV, ONLY AFTER NOTICE SIX MONTHS IN ADVANCE. GIVEN
THESE PROCEDURAL REQUIREMENTS, AND IN ORDER TO
PRESERVE MAXIMUM FLEXIBILITY IN THE DISCUSSIONS WHICH
ARE IN PROGRESS, THE GOVERNMENT OF THE UNITED STATES
FEELS IMPELLED TO GIVE THE NOTICE REQUIRED BY ARTICLE
XXIV TO PERMIT TERMINATION OF THE CONVENTION AT THE END
OF THE CURRENT CALENDAR YEAR, AND SUCH NOTICE IS HEREBY
GIVEN. THE GOVERNMENT OF THE UNITED STATES WISHES
TO EMPHASIZE, HOWEVER, THAT THE NOTICE IS A FORMALITY
REQUIRED TO MAINTAIN NEGOTIATING FLEXIBILITY AND TO
GIVE ASSURANCE THAT IT WILL BE WITHDRAWN IN TIMELY
FASHION PRIOR TO YEAR ENDIF, AS EXPECTED, SATISFACTORY
PROGRESS TOWARDS FULL AND FINAL AGREEMENT IS ACHIEVED.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY
HIGHEST CONSIDERATION.
TURNER

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Message Attributes

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